

The legislative framework

Q1 – Do you agree that existing legislation relating to burial and cremation should be repealed and replaced by a new legislative framework?

Yes  No  Don't Know

Additional information:

Q2 – Are there any particular powers that are required by Burial Authorities or Cremation Authorities that are not provided for by current legislation?

Response: Legislation should be considered for the provision of weights of deceased for burial / cremation. If this is not practical in legislation it should be considered as best practice with guidelines.

Q3 - Do you agree that the proposed Burial and Cremation (Scotland) Bill should apply to all cemeteries and crematoria in Scotland, regardless of whether they are publically or privately operated? If not, please set out reasons why not.

Yes  No  Don't Know

Additional information: The rights of the bereaved should be equally available regardless of management arrangements.

Q4 - Do you agree that the Bill should contain provisions which apply to all facilities where any new method of disposal which might be introduced in Scotland are carried out?

Yes  No  Don't Know

Additional information:

Q5 - Do you agree that the Bill should contain provisions to regulate environmentally friendly methods of disposal that are already available in Scotland?

Yes  No  Don't Know

Additional information:

Q6 – Should the Burial and Cremation (Scotland) Bill contain provisions pertaining to home burial?

Yes  No  Don't Know

Additional information:

Q7 - In making legal provision for home burial, what factors should be considered?

Response: A template or procedural note should be drawn up that covers all parties involved including but not limited to SEPA and the Burial Authority.

(Land ownership, size of property, location, future access)

Q8 - Are there any reasons why private cremation should not remain illegal?

Yes  No  Don't Know

Additional information: Clarity on level of criminality and penalties should be made available.

Q9 - Do you agree that alternative methods of disposing of the dead should be regulated for in this way? Are there any particular alternative methods that should be considered? Are there any particular methods which should be prevented from being used in Scotland?

Yes  No  Don't Know

Additional information: Alternative methods to be reviewed as required.

Q10 - Do you agree with this definition of ashes? If not, how should ashes be defined?

Yes  No  Don't Know

Additional information:

Q11 - Do you agree that a minimum distance of 200 yards (182.9 metres) should be required between crematoria and housing? If not, please explain why not.

Yes  No  Don't Know

Additional information: Clarification on the reasoning why 200 yards was selected as a standoff distance should be provided. In addition consideration should be given as setting this standoff distance as a guideline rather than a fixed distance to allow site specific circumstances to be taken into account.

Q12 - What are your views on the use of enforcement powers or penalty powers in response to such a minimum distance being breached?

Response: If this becomes enforceable it should be made clear on any new application to build a Crematorium or new applications for housing that the minimum distance should be adhered to or strict penalties will be enforced.

### The right to instruct the disposal of human remains

Q13 - Do you agree that the right to instruct the disposal of a body on death in the case of an adult should be vested in the nearest relative using the definition at Section 50 of the Human Tissue (Scotland) Act 2006? If not, why not? In whom should this power be vested instead?

Yes  No  Don't Know

Additional information: **Given that this situation may occur it may be preferable for this to be dealt with statutorily to minimise the risk of adverse publicity to the Council from having to make unpopular decisions (and the associated distress to Council staff). It is unclear from paragraph 40 who is to be responsible for making the application to the Sheriff. This should be clarified.**

Q14 - In the case of the death of a person under the age of 16 years, do you agree that the right to instruct the disposal of the body should follow the proposal at paragraph 43? If not, why not? In whom should this power be vested instead? How should this be defined in legislation?

Yes  No  Don't Know

Additional information: **Paragraph 43 provides that a person with parental responsibilities and rights has the right to instruct the disposal. This does not take into account that frequently there are two such people, generally the mother and the father. While only one such person would deal with the arrangements there is scope for dispute and I would have thought that where this arises it would be in the Council's interest for it to be laid down in statute what was to happen. Should there be a requirement for the second person with parental responsibilities and rights to counter-sign the application? May be impractical, e.g. due to illness/distress. Again reference to disputes that have arisen locally, if any, might help formulate a way ahead. If the law is being revisited it should also deal with circumstances such as a as fostering/care/suspension of parental responsibilities and rights.**

Q15 - Do you agree with the proposal for who should have the right to instruct the disposal of the body in the event of a stillbirth? If not, why not? Who should have the right to instruct the disposal of the body in the event that the mother or father are unable to do so? How should this right be defined in legislation?

Yes  No  Don't Know

Additional information: **Comments provided at Q14 equally apply here also.**

Q16 - Do you agree with the proposal of allowing someone not listed to instruct the disposal of human remains in the case of a stillborn baby, pregnancy loss and the death of a child only on cause shown? Is it appropriate that no similar provision is proposed for the death of an adult?

Yes  No  Don't Know

Additional information: Only identified organisations such as N.H.S would have such authority. Similair provision should be considered for the death of an adult to allow for a Public Health Funeral, or where someone has a prepaid burial plan where the the Funeral Director may be the only available applicant or a specific request in a will / executor.

### The management of cemeteries

Q17 - Do you agree that Scottish Ministers should have the power to make regulations pertaining to the general management of cemeteries, including giving Burial Authorities the right to take action to address unsafe, damaged and abandoned lairs and memorials?

Yes  No  Don't Know

Additional information: It should be acknowledged that responsibility for taking action on unsafe, damaged or abandoned memorials would have operational and financial implications but would nevertheless support the position of a local authority having such authority.

Q18 - Alternatively, would the introduction of non-statutory guidance provide a useful option between the current situation where no guidance exists and the introduction of regulations?

Yes  No  Don't Know

Additional information: Would prefer a statutory framework in which to operate from

Q19 - Are there any reasons why a minimum burial depth of 3 feet from the surface to the top of the coffin should not be implemented? Should there be any exemptions?

Yes  No  Don't Know

Additional information: To enable this to work you would need to establish an initial depth for the first interment and following the second interment you would require to assess how much depth is available for the third interment due to the sizes of previous coffins. If the third coffin is presented at the lair and the size would leave less than three feet then this would clearly have implications so where feasible it could occur we would support such a position.

### Burial and cremation records

Q20 – Do you agree that records and forms relating to burial and cremation in Scotland should be stored and transferred electronically wherever possible? Should any exclusions apply? Should this be applied to all forms of disposing of human remains in Scotland?

Yes  No  Don't Know

Additional information: Yes and to all stated forms.

Q21 – Should records and forms relating to burial and cremation be kept for 50 years or is it better that they are kept indefinitely?

50 years  Indefinitely  Other period

Additional information:

Alleviating pressure on burial grounds

Q22 - Do you agree that the sale of lairs in perpetuity should be ended?

Yes  No  Don't Know

Additional information: The groups comments relating to the sale of lairs states that not selling in perpetuity would help the upkeep of the maintenance of the cemeteries and lairs. However the local authority is responsible for the upkeep not the lair owner therefore this is not relevant.

Q23 - Does the proposed alternative approach provide a suitable balance between enabling people to buy lairs and safeguarding lairs for the future?

Yes  No  Don't Know

Additional information:

Q24 - Should there be any restrictions about to whom the owner of a lair can transfer his or her interest? Should this be restricted to family members?

Response: Transfer should be in accordance with Section 50 (Human Tissue) unless transfer is defined in a will. It should still remain that only the local authority can grant right of burial.

Q25 - Do you agree that Burial Authorities should no longer be able to sell multiple lairs or blocks of lairs to an individual?

Yes  No  Don't Know

Additional information: Our Council does not sell blocks to individuals.

Q26 - The Burial and Cremation Review Group recommended that Burial Authorities may refuse to sell a lair if it believes that it is not for imminent use. How long should constitute 'imminent' in this situation? How could this be tested?

Response: As a local authority we currently pre sell lairs if there is sufficient capacity to do so and operate and deliver cemetery services on such a basis. Where we have less than 5 years of new lairs available we stop pre-selling.

Q27 – Do you agree with the proposal that full lairs and partially-full and unused lairs should be considered for reuse in certain circumstances with appropriate safeguards in place?

Yes  No  Don't Know

Additional information: We would reuse unused lairs but not partial or full lairs.

Q28 - Is a period of 75 years sufficient before reuse of a full lair can be considered?

Yes  No  Don't Know

Additional information: We don't consider reuse of a full lair to be appropriate.

Q29 - Does the initial consultation provide sufficient assurance that relevant specialist interests have been consulted? Should any other specific organisations or groups be consulted at this stage?

Yes  No  Don't Know

Additional information: Why differ between faith groups? SEPA should be included in consultation. Planning regarding previous mining issues.

Q30 - Does the process set out allow for sufficient notice to be given that a lair is being proposed for reuse? Should any particular methods of notification be used in addition to those noted?

Yes  No  Don't Know

Additional information: Notification detail would include Last known contact (lair owner), Signage at cemetery, National Press, Local Press, Internet.

Q31 – What can be done to make sure that there are no financial disincentives to opposing to the reuse of a grave?

Response: Further clarity required to the full meaning of this question.

Q32 - Other than family members, who should be able to object to the proposed reuse of a lair?

Response: Revert to Section 50 of The Human Tissue (Scotland ) Act 2006. Historic Scotland, historical groups relating to people of importance buried within cemeteries.

Q33 - What considerations should be made to determine whether an objection from a non-family member is legitimate?

Response: Review of all objections to be made by parameters set out in legislation.

Q34 - If the Burial Authority decides not to reuse a lair on the basis of an objection from a non-family member, should that person become liable for the maintenance of the lair? If not, should the Burial Authority remain responsible?

Response: Burial Authority responsible for maintenance, not an "objector"

Q35 - Do you agree that the 'dig and deepen' method should be used to allow the reuse of full lairs?

Yes  No  Don't Know

Additional information: With further consultation and controlled exposure such a practice may develop and be of a benefit to local authorities.

Q36 - Are any other techniques available that should be considered?

Response: Exhume and cremate could be an option.

Q37 - Do you agree that headstones and memorials may be reused if appropriate?

Yes  No  Don't Know

Additional information:

Q38 - Do you agree that headstones and memorials should be removed from lairs if they cannot be made safe? In this instance, what should happen to headstones and memorials that are removed?

Yes  No  Don't Know

Additional information: Unsafe headstones should be laid down flat but not removed from the "body of the lair area"

Q39 - Are any other approaches for easing the pressure on burial land suitable for use in Scotland? For example, should above ground mausoleums, similar to those found in Europe, be considered?

Response: This is for each local authority to determine on it's own accord but land searches for suitable interment land (private and public) should be exhausted initially.

Q40 - Is a period of 25 years sufficient before the use of a partially-full or unused lair can be considered?

Yes  No  Don't Know

Additional information:

Q41 - Is 12 months long enough to advertise the intended reuse of a full lair or use of a partially-full or unused lair? Where should the Burial Authority's intention be advertised?

Yes  No  Don't Know

Additional information: 12 months allows for all anniversaries to be covered where visitors may only attend at certain times. Last known contact (lair owner), Signage at cemetery, National Press, Local Press, Internet, Funeral Directors.

Q42 - Where a Burial Authority intends to reuse a lair having undertaken all appropriate consultations, should it be required to make clear to prospective purchasers that the lair is being reused or is part of a lair that is partly full?

Yes  No  Don't Know

Additional information:

Q43 - Do the safeguards described provide sufficient reassurance to ensure that lairs are not reused inappropriately? Are any other safeguards required – for example, should the Burial Authority be required to seek a court order to reuse a lair?

Yes  No  Don't Know

Additional information: The councils view is that dig and deepen should be a last resort as it is committed to providing land for burials.

Q44 - Should certain categories of grave – such as Commonwealth War Graves – be automatically excluded from consideration for reuse?

Yes  No  Don't Know

Additional information:

#### Exhumation

Q45 - Do you agree with the proposals to streamline the process for authorising exhumations, including an additionally streamlined process for particular categories of exhumation?

Yes  No  Don't Know

Additional information:

Q46 - Do you agree with the proposal to provide an alternative process where the purpose of the exhumation is to allow the reuse of a full lair, including that the Burial Authority need not seek specific authorisation once it has carried out specified notifications that it intends to reuse the grave?

Yes  No  Don't Know

Additional information:

Q47 - Do you agree that authorisation for exhumations should be carried out by the inspector, rather than the Scottish Government?

Yes  No  Don't Know

Additional information: Would this expedite the process in a more effective and timeous manner?

Q48 - Do you agree with the proposed approach for the exhumation of cremated remains?

Yes  No  Don't Know

Additional information: This should read "Ashes" and not cremated remains

#### Pandemics and mass-fatality events

Q49 – Do you agree that the Bill should set out the process for applying for and authorising an exhumation for archaeological purposes? Should any particular issues be taken into account or conditions applied?

Yes  No  Don't Know

Additional information: Historic Scotland should be involved in all archaeological discussions as a formal consultee on the intended action.

Q50 - Do you agree that the same power to suspend regulations relating to cremation in response to pandemics or other similar incidents should be extended to any relevant burial regulations?

Yes  No  Don't Know

Additional information: Further clarification required on what elements would be suspended.

#### Cremation forms and procedures

Q51 - Do you agree with the principle that a single form should be prescribed for applying for cremations or is it preferable that separate forms should be provided for applying for different categories of cremation? Please set out your reasons for your view.

Yes  No  Don't Know

Additional information: Single form that covers all eventualities and does not differentiate between NVF's, Stillborn, children, adults, tissue or body parts as all are treated in the same manner.

Q52 - Do you agree that each of these categories should be provided for in cremation application forms?

Yes  No  Don't Know

Additional information:

Q53 – Do you agree that Form A should contain these options for any ashes which are recovered?

Yes  No  Don't Know

Additional information:

Q54 – Do you agree that no cremation which is applied for using Form A should be able to proceed unless the applicant has specified what should happen to the

ashes? Do the categories above cover all relevant options or should other options be offered?

Yes  No  Don't Know

Additional information: Addition of specific area within the crematorium could be added to allow for Ashes to be scattered or interred at a particular memorial. Further consultation should be done regarding timescales of scattering of ashes.

Q55 – Do you agree that Form A should state that it may not be possible to recover ashes after the cremation of a very young child?

Yes  No  Don't Know

Q56 – Is the process for enabling a person other than the applicant to collect any ashes recovered appropriate? Are the timings proposed suitable?

Yes  No  Don't Know

Additional information:

Q57 - If ashes are left at the crematorium, how long should be required to elapse before the crematorium can make arrangements to dispose of the ashes?

Response: 4 weeks

Q58 – Do you agree that the application should be countersigned by someone who is not a member of the applicant's family and who is not involved in the arrangements for the cremation? Will this prove impractical? Should the legislation specify categories of people who may countersign cremation application forms?

Yes  No  Don't Know

Additional information: Yes legislation should specify categories of people who may countersign cremation application forms.

Q59 – Should application for other categories of cremation require a countersignature?

Yes  No  Don't Know

Additional information: Section 50 list should suffice.

Q60 - Given the similarities between the proposed forms, would a single application form applying to the cremation of people born alive and stillborn babies be appropriate, allowing for specific sections of the form to be completed depending on the kind of cremation? Would separate forms for each category be more appropriate?

Yes  No  Don't Know

Additional information: Yes to part 1 of question.

Q61 - What information should be considered essential for the cremation application?

Response: Name, age , sex and address of deceased. Name and address of applicant and their relationship to the deceased as per section 50. Day, date and time of service. Method of disposal, Name of Funeral Director, officiant, music required, coffin dimensions, weight of deceased, coffin construction.

Q62 - What is the best way to enable Cremation Authorities to undertake this scrutiny? What level of seniority is appropriate for this role? Should the crematorium manager be legally responsible for this scrutiny, even if the actual scrutiny is delegated to a suitably senior member of staff? Should a senior Cremation Authority staff member be required to countersign the form to confirm that all legal requirements have been met?

Response: Legal obligation should not be assigned to a Crematorium Manager. If there is a will for such an approach it should be assigned to the local authority.

Q63 – Is there any need for the introduction of statutory forms for applying for a burial?

Yes  No  Don't Know

Additional information: A parallel process for burials should be introduced.

### Pregnancy loss

Q64 – Is a comparable process for the burial of a pregnancy loss of less than 24 weeks gestation required?

Yes  No  Don't Know

Additional information: A parallel process for burials should be introduced.

Q65 - Is an alternative process required before the cremation of a pregnancy loss where there is no medical certificate?

Yes  No  Don't Know

Additional information: G.P. / NHS/ Procurator Fiscal documentation should be required.

Q66 – Do you agree with these proposals for the form used to seek the mother's agreement to the hospital organising the cremation of a pregnancy loss of less than 24 weeks' notice?

Yes  No  Don't Know

Additional information: Declaration from mother should be provided if alternative applicant is used.

Q67 - Do you agree with the proposal for who should have the right to instruct the disposal of the remains in the event of a pregnancy loss of less than 24 weeks gestation? If not, in whom should this right be vested?

Yes  No  Don't Know

Additional information:

Q68 - Do you agree with the proposal to provide a list of people who have the right to instruct the disposal of the remains in the event that the woman is unable to do so? If so, who should be included in this list?

Yes  No  Don't Know

Additional information: As prescribed in section 50 or as prescribed by N.H.S..

Q69 – Should there be a maximum time for which a pregnancy loss can be stored by a hospital before it is cremated as part of a shared cremation? How long should this be?

Yes  No  Don't Know

Additional information: NHS to comment.

Q70 – Should the forms for the cremation of a pregnancy loss of less than 24 weeks gestation be statutory? If not, why not?

Yes  No  Don't Know

Additional information:

Q71 - Should the form used by the hospital to release a pregnancy loss to the mother be statutory?

Yes  No  Don't Know

Additional information:

Q72 – Should there be a prescribed form for the application for cremation of a pregnancy loss of less than 24 weeks gestation where the cremation is organised by the mother?

Yes  No  Don't Know

Additional information: This should be included in the revised Form A.

Q73 – Do you agree that the application should be countersigned by someone who is not a member of the applicant's family and who is not involved in the

arrangements for the cremation? Will this prove impractical? Should the legislation specify categories of people who may countersign cremation application forms?

Yes  No  Don't Know

Additional information: Yes legislation should specify categories of people who may countersign cremation application forms.

#### Cremation register

Q74 - Is this list comprehensive? Should any other information be required to be recorded in the Cremation Register?

Yes  No  Don't Know

Additional information: Relationship of applicant to deceased and proof of entitlement to apply.

Q75 – Does this proposal provide sufficient confidentiality in the case of the cremation of a pregnancy loss?

Yes  No  Don't Know

Additional information:

Q76 - Are there any reasons why the Cremation Register should not be a public document, assuming that appropriate data protection and confidentiality considerations are in place?

Yes  No  Don't Know

Additional information: Guidance should be given as to what information from the register is given out.

Q77 - Do you agree that the Cremation Register should be retained indefinitely?

Yes  No  Don't Know

Additional information:

#### Accreditation of Cremation Authority staff

Q78 - Should the accreditation requirements described in paragraph 176 be set out in a Code of Practice or in legislation?

Code of Practice  Legislation  Don't Know

Additional information:

Q79 - How should a person's accreditation be checked? How often should a person's accreditation be checked or renewed?

Response: All training should be held on a register by Inspector of Crematoria. Any changes in staff should be updated by the Cremation Authority.

### Inspector of crematoria

Q80 - Do you agree that the role of Inspector should be responsible for crematoria and cemeteries?

Yes  No  Don't Know

Additional information: The Inspector should not be responsible for the crematoria and cemeteries but monitor as per prescribed guidelines and standards. Would the Inspector replace the ombudsman?

Q81 – Do you agree that the Inspector should be responsible for particular additional functions, as described? Are there any other functions that the inspector should carry out?

Yes  No  Don't Know

Additional information: Further discussion is required but it is supported in principal.

Q82 - Should there be a formal schedule of inspection to ensure that every Cremation Authority and Burial Authority is inspected at least once during a given period?

Yes  No  Don't Know

Additional information: A random unannounced visit would also be acceptable. Information and reports should be available to public.

### Regulation of the funeral industry

Q83 - Would regulation of the funeral industry be beneficial? What would regulating the industry achieve that cannot be achieved already? What are the disadvantages of regulating the funeral industry?

Yes  No  Don't Know

Additional information:

Q84 - If the funeral industry were to be regulated, what approach would be most useful for Scotland? Do the examples given from other jurisdictions provide useful models, ranging from a fully licensed system to a process of self-regulation?

Yes  No  Don't Know

Q85 - Do you agree that an additional inspector role, separate from the Inspector of Crematoria, would be required to support a regulatory regime?

Yes  No  Don't Know

Additional information: More information is required on remit of role.

Funeral poverty

Q86 - Do you agree with the proposal that Local Authorities should have a legal duty to ensure that their up-to-date burial and cremation costs are published on their website in clear and accessible way?

Yes  No  Don't Know

Additional information:

Q87 - Should Local Authorities be required by law to charge funeral costs on a cost-recovery basis only?

Yes  No  Don't Know

Additional information:

Q88 - What else could be done to reduce funeral costs and ensure that they remain affordable for everyone?

A basic funeral package should be advertised within all Funeral Directors as standard and additional items, upgrades or extras could be added if desired.

Any other relevant issues

Please use this space to provide information about relevant issues which are not covered in the consultation paper or any topic which you think should be considered:

Response: